



City of Montebello

December 31, 2012

VIA E-MAIL <Redevelopment_Administration@dof.ca.gov>

California State Department of Finance
Local Government Unit
915 L Street
Sacramento, CA 95814

Re: Montebello Objection to ROPS III "True Up"

Dear Department of Finance:

The correspondence pertains to adjustments to the Real Property Tax Trust Fund ("RPTTF") disbursement made by the Los Angeles County Auditor-Controller ("**Auditor-Controller**") to the Montebello Successor Agency ("**Successor Agency**") for the January through June, 2013, Recognized Obligations Payment Schedule payment period ("**ROPS III**").

The Auditor-Controller has concluded, and the Department of Finance has ratified, that the Successor Agency's ROPS III disbursement should be reduced by \$3,304,303 to account for an excess in funding during the ROPS I and II payment periods. This correspondence serves as notice that the Successor Agency disputes this reduction, and requests that Finance require the Auditor Controller to either: (1) disburse \$5,449,448 to the Successor Agency on January 2, 2013, in full payment of approved "enforceable obligations" appearing on ROPS III; or (2) withhold remittance of any residual RPTTF monies to the taxing entities until the Successor Agency has had an opportunity to clarify the matters discussed herein with Finance and/or the Auditor-Controller. The failure to comply with the Successor Agency's request will result in a shortage of funding for ROPS III, and threaten the default of "enforceable obligations" appearing thereon.

BACKGROUND

Health & Safety Code Section 34186(a) provides:

"Differences between actual payments and past estimated obligations on recognized obligations payment schedules shall be reported in subsequent recognized obligations payment schedules and shall adjust the amount to be transferred to the Redevelopment Obligations Retirement Fund pursuant to this part. These estimates shall be subject to audit by the county auditor controllers and the Controller."

Pursuant to this authority, the Auditor-Controller provided notice that it was reducing the Finance-approved RPTTF disbursement to the Successor Agency by \$3,304,303, as reconciliation from the ROPS I and ROPS II payment periods. According to the Auditor-

Controller, this reduction in RPTTF funding was necessary to recover RPTTF funds expended by the Successor Agency on items not recognized as "enforceable obligations" on ROPS I and II. On or about December 17, 2012, Finance provided notice to the Successor Agency confirming the Auditor-Controller's ROPS III RPTTF adjustment.

The \$3.3 million adjustment pertains to expenditures made by the Successor Agency to the City of Montebello pursuant to the "repayment of advances" that was listed as Item No. 12 on ROPS I and II ("**Repayment Advances**"). The item was rejected by Finance during its ROPS I and II review, based upon Finance's flawed conclusion that the item constituted an agreement between a former agency and its founding city. (Health & Safety Code § 34171(d)(2).) The Successor Agency vehemently disputed this determination, and objected by written correspondence to Finance, dated May 24, 2012. Without any meaningful response to the Successor Agency's May 24 correspondence, Finance confirmed its initial determination and rejected the Repayment of Advances as an "enforceable obligation" for the ROPS I and II payment periods.

The Successor Agency continued to dispute Finance's determination, but was left without an administrative remedy until the passage of AB 1484 and the attendant imposition of the "meet-and-confer" process. (Health & Safety Code § 34177(m).) The Successor Agency intended to include the Repayment Advances on its draft ROPS III for reconsideration but, the item was inadvertently omitted. This omission was not discovered until the Auditor-Controller provided notice of its proposed ROPS III adjustment.

Despite the inadvertent omission of the item from its ROPS III, the Successor Agency maintains that the Repayment Advances represent "enforceable obligations" of the former Agency, and believes that Finance's rejection thereof was based on a misunderstanding of the item. In particular, the \$3.3 million identified on ROPS I and II as due the City under the Repayment Advances represents funds owed by the former Agency to the City under three (3) separate "enforceable obligations," and were merely consolidated by the Successor Agency as a single item for ease of reference. These "enforceable obligations" are as follows: (1) \$1.8 million in payments owed by the Agency under the 2000 Reimbursement Agreements for fiscal year 2010/11, and that were paid by the City on the Agency's behalf; (2) \$1.1 million for the Agency's fiscal year 2010/11 SERAF payment obligation that was paid by the City on the Agency's behalf; and (3) \$400,000 owed by the Agency to the City pursuant to a facilities and maintenance agreement entered into between the parties in 1979.

As set forth in detail below, the Successor Agency's allocation of RPTTF monies during the ROPS I and II payment periods to satisfy each of these "enforceable obligations" was proper, and should not be the basis for the Auditor-Controller or Finance reducing the Successor Agency's ROPS III allocation.

AMOUNTS EXPENDED BY THE SUCCESSOR AGENCY IN CONNECTION WITH THE 2000 REIMBURSEMENT AGREEMENT WAS PROPER

As noted above, \$1.8 million of the \$3.3 million adjustment identified by the Auditor-Controller relates to transfers made by the Successor Agency to the City of Montebello in January, 2012, as repayment for the City's satisfaction of the former Agency's debt service obligations owed on

the 2000 Reimbursement Agreements. More specifically, the Agency's timing of the receipt of its property tax increment with its enforceable obligations during the 2010/11 fiscal year, caused the City to pay the funds required to satisfy the Agency's debt service obligations on the 2000 Reimbursement Agreements to avoid default thereof. The amount of this payment (\$1.8 million) was included in the Repayment Advances listed on ROPS I and II. Critically, since Finance initially rejected the Repayment Advances on ROPS I and II, Finance has recognized the 2000 Reimbursement Agreements as an "enforceable obligation" of the Agency. (**Attachment "A"** [Finance's revised ROPS III determination letter].)

Given Finance's recent determination, it's beyond dispute that the \$1.8 million paid by the Successor Agency to the City as repayment for its 2010/11 fiscal year Reimbursement Agreement payment should not be the basis for a reduction in ROPS III funding.

AMOUNTS EXPENDED BY THE SUCCESSOR AGENCY IN CONNECTION WITH THE SERAF PAYMENT WAS PROPER

In addition, the Successor Agency transferred \$1.1 million to the City of Montebello as reimbursement for the City's satisfaction of the former Agency's SERAF payment obligations for the 2010/11 fiscal year. As noted above, the Agency's timing of the receipt of its property tax increment with its enforceable obligations during the 2010/11 fiscal year caused the City to make the SERAF payment on the Agency's behalf to assist the Agency in complying with its legal obligations. Amounts owed to the City for this payment constitute an "enforceable obligation" pursuant to Health & Safety Code Sections 34171(d)(1)(C), (E) and (G). As such, amounts transferred thereunder do not support a reduction in the Successor Agency's ROPS III disbursement.

AMOUNTS TRANSFERRED UNDER THE FACILITIES MANAGEMENT AGREEMENT WAS PROPER

The remaining \$400,000 of the \$3.3 million identified by the Auditor-Controller relates to a formal agreement, dated 1979, entered into between the City and the Agency. Pursuant to the agreement, the Agency contracted with the City for the provision of administrative and contractual services and facilities required to operate the Agency (hereinafter the "**Agreement**"). The Agreement was executed pursuant to Health & Safety Code Sections 33126 and 33128 (as those sections existed at the time), and formalized an administrative policy of the Agency under the same terms, dated 1976. The \$400,000 paid from by the Successor Agency to the City during ROPS I and II represented remaining amounts owed to the City under the Agreement.

With this background, the Agreement constitutes an "enforceable obligation" of the former Agency for several reasons. First, the funds advanced to the Agency under the Agreement were monies owed directly by the Agency to third-parties for employee salaries, benefits, and project implementation costs. Such expenses are unquestionably "enforceable obligations" pursuant to Health & Safety Code Section 34171(d)(1)(E), as a "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." The City fronted the Agency the costs of satisfying such employee and project costs because the Agency lacked an independent checking account, and thus was unable to make the payments associated with these "enforceable obligations" directly; hence, the need for the Agreement.

The mere fact that the City fronted the Agency the funds to satisfy these "enforceable obligations" does not change their status as such, and the City is unquestionably entitled to reimbursement for such advances.

Indeed, it's noteworthy that Assembly Bills 1x26 and 1484 (jointly the "**Dissolution Act**") preserve an identical funding scheme for enforceable obligations to that enjoyed by the City and Agency under the Agreement. Specifically, Health & Safety Code Section 34173(h) authorizes cities that created a redevelopment agency to loan or grant funds to its successor agency to fund administrative costs, enforceable obligations, or project related expenses, and such fund advances constitute "enforceable obligations." The Agreement had an identical financial structure, under which the City loaned funds to the Agency to fund administrative and project related costs. Finance's refusal to recognize the Agreement and funds due thereunder is arbitrary, given that the Dissolution Act expressly recognizes such agreements between cities and their respective successor agencies.

Additionally, even if the Agreement is characterized as a City-Agency loan agreement (which it should not be), the item still constitutes an enforceable obligation. This is because the Agreement was executed pursuant to then-existing statutory authority (Health & Safety Code §§ 33126, 33128) and, having been in place and performed by the City and Agency for over thirty (30) years, Finance is estopped from challenging its validity.¹ Indeed, the Agreement dates back to the origin of the Agency's project areas, and therefore qualify as "enforceable obligation" under Health & Safety Code § 34171(d)(2), as a loan agreement entered into between the City and Agency within two years of the Agency's creation. The Agency's project areas were created in 1973 (South Montebello Industrial Redevelopment Project Area), 1975 (Montebello Hills Redevelopment Project Area), and 1982 (Montebello Economic Revitalization Project Area) respectively, and, under the former Community Redevelopment Law, redevelopment agencies were not authorized to act absent identification of specific project areas and an attendant formalized redevelopment plan. As such, because the Agreement was formalized in 1979, and the administrative policy had been in place since 1976, the Agreement and the associated fund advances by the City to the Agency thereunder are irrevocably linked to the "creation period" of the Agency, and should be recognized as "enforceable obligations."

Based upon the foregoing, the Successor Agency maintains that the \$400,000 transferred to the City under the Agreement was transferred pursuant to an "enforceable obligation" of the former Agency, and should not be the basis for a reduction in ROPS III funding.

CONCLUDING REMARKS

In closing, the Successor Agency believes that the Auditor-Controller and Finance's determination calling for a \$3.3 million reduction in the Successor ROPS III funding was made in error. As such, the Successor Agency requests that Finance direct the Auditor-Controller to distribute sufficient RPTTF monies to fund all recognized enforceable obligations appearing on

¹ Under California's validation statutes, failure to challenge validity of city contract, or adoption of a redevelopment plan, beyond 60 days of its approval impliedly validates it, preventing a retroactive challenge by any interested parties, including third-party state agencies. (CCP § 863, *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335; *Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494)

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ROPS III, or withhold disputed amounts from allocation to the taxing entities until the Successor Agency has had an opportunity to meet with county staff. Failure to do so will cause irreparable harm to the Successor Agency, the City, and private third parties, in that the proposed reduction threatens default on recognized "enforceable obligations." The Successor Agency stands ready and able to provide additional insight and clarification on the matters discussed herein.

Very truly yours,



Francesca Tucker-Schuyler
City Administrator/Interim Executive Director
City of Montebello/Montebello Successor Agency

Attachment

cc: Arlene Berrera, Chief of Property Tax
Kristina Burns, Property Tax Manager
Alejandro Duenas, Property Tax Division
Mark Hill, Program Budget Manager
Steve Szalay, Local Government Consultant
Evelyn Suess, Supervisor
Mary Halterman, Analyst
Michael Barr, Lead Analyst
Redevelopment Agency Administration
Arnold Alvarez-Glasman, City Attorney
Christopher Cardinale, Deputy City Attorney
Michael Huntley, Director of Planning and Community Development